

October 12, 2015

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street SW
Room TW-A325
Washington, DC 20554

RE: Docket 12-375—Inmate Calling Services (ICS)

Dear Madame Secretary,

I file this *ex parte* communication on behalf of the Indiana Sheriffs' Association (ISA). The ISA is a non-profit educational and service organization comprised of the 92 Indiana county sheriffs, their deputies and other law abiding citizens throughout the State of Indiana. The ISA was formed for the purpose of providing assistance to sheriffs, their deputies and other department personnel, thereby enabling them to improve the delivery of law enforcement services to the citizens of Indiana.

The ISA supports the comments and reply comments filed by the National Sheriffs' Association (NSA) in this matter. The ISA also supports the comments and reply comments filed by various Sheriffs in the State of Indiana as well as those filed by Sheriffs' Associations and Sheriffs around the country. A list of these filings is enclosed for your reference. The collective reasoning behind these filings is well founded. County jails, including those in Indiana, use the funds you are jeopardizing to pay for important safety and security features in the jails as well as to provide additional inmate services that would otherwise be unavailable.

Indiana, however, is unique in some ways. Since 2002, Indiana Sheriffs operating jails in Indiana's large counties (populations over 75,000) cannot solicit a per call service charge, a per minute rate, or a commission rate that exceeds the terms of a contract between the state and a telecommunications provider for the same service. Indiana Code § 5-22-23-6. In other words, our large county jails are subjected to the same telecommunications standards as our state department of corrections. These Sheriffs must solicit competitive bids from telephone service providers "that emphasize lower per call service charges, per minute rates, and commission rates." *See Alexander v. Marion County Sheriff*, 891 N.E.2d 87, 96 (Ind. Ct. App. 2008) (class of family members, friends, and attorneys of inmates in the Marion County jail and Indiana Department of Correction facilities failed to demonstrate that rate charges would be lower if the Sheriff and the State did not receive commission payments). The FCC should allow Indiana's legislature and courts to police county ICS.

In addition, Indiana's legislature has directed how ICS funds (along with other jail revenue sources such as merchandise sales) may be used. Under Indiana Code § 36-8-10-21, jail commissary funds may be used only for the following:

- (1) merchandise for resale to inmates through the commissary;
- (2) expenses of operating the commissary, including, but not limited to, facilities and personnel;
- (3) special training in law enforcement for employees of the sheriff's department;

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- (4) equipment installed in the county jail;
- (5) equipment, including vehicles and computers, computer software, communication devices, office machinery and furnishings, cameras and photographic equipment, animals, animal training, holding and feeding equipment and supplies, or attire used by an employee of the sheriff's department in the course of the employee's official duties;
- (6) an activity provided to maintain order and discipline among the inmates of the county jail;
- (7) an activity or program of the sheriff's department intended to reduce or prevent occurrences of criminal activity, including the following:
 - (A) Substance abuse.
 - (B) Child abuse.
 - (C) Domestic violence.
 - (D) Drinking and driving.
 - (E) Juvenile delinquency;
- (8) expenses related to the establishment, operation, or maintenance of the sex and violent offender registry web site under IC 36-2-13-5.5; or
- (9) any other purpose that benefits the sheriff's department that is mutually agreed upon by the county fiscal body and the county sheriff.

As you can see, many important aspects to running jails are paid for through commissary. This money is used at the Sheriff's discretion—in fact, it is the only money over which the Sheriff has complete control. It does not get deposited into the county general fund. Because ICS is a large part of Indiana jail commissary funding, any cuts will effectively eliminate many of these discretionary items for both the Sheriff's Office and inmates. Indiana county commissioners and council will not likely make up the difference from the county general fund. Importantly, this new rule will negatively impact all Indiana counties, but Indiana's smaller counties may be most devastated.

Additionally, I cannot emphasize enough the importance of ICS to jail investigations. Voice biometrics, 3-way call interception, and investigator alerts aid investigation and prosecution of inmate crimes. These options will no longer be available, especially in Indiana's smaller counties, without help from ICS revenue. Eliminating the benefit of this information will make jails less safe for inmates and for law enforcement.

Finally a serious omission in the FCC's rulemaking process is that it is treating prisons and jails the same. Myriad differences exist including how they run, budgeting, statutory requirements, and inmate access to visitation. Even differences between large jails and small jails compel autonomy on funding and providing services. Many Indiana Sheriffs have notified the ISA that they may be forced to discontinue or significantly limit discretionary inmate calling services if they cannot recover their costs. Without its own funding source, ICS is simply not a viable option for inmates in Indiana jails. This will be an unintended yet real consequence of this rule that the FCC cannot ignore. The FCC's attempt at a one-size-fits-all approach will cause serious harm to Indiana Sheriffs, Indiana inmates and their families, and Indiana citizens.

On behalf of the Sheriffs in the State of Indiana, I urge you to reconsider implementing this rule. I am happy to speak with you about this further.

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Best regards,

Stephen P. Luce (ret.)
Executive Director

cc: Indiana Sheriffs
Governor Mike Pence
Indiana General Assembly
Senator Daniel Coats
Senator Joe Donnelly
Congressman Peter Visclosky
Congresswoman Jackie Walorski
Congressman Marlin Stutzman
Congressman Todd Rokita
Congresswoman Susan Brooks
Congressman Luke Messer
Congressman André Carson
Congressman Larry Bucshon
Congressman Todd Young